**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

Civil Writ Petition No. 8774 of 2005

Date of decision : 31-10-2006

Kuldeep Singh … Petitioner

Versus

Presiding Officer and another. … … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Deepak Sharma, Advocate,
for the petitioner

Mr. Aman Chaudhary, Advocate,
for respondents No.2 and 3.

…

ARVIND KUMAR, J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing of award dated 12.12.2003, Annexure P-1, whereby the learned Labour Court,Ambala, though held his termination to be illegal but dismissed his claim statement on the ground of delay of 5-1/2 years, and further writ in the nature of Mandamus directing the respondents to reinstate him with full back wages and other consequential benefits.

It is the case of petitioner-workman that vide order dated 8.10.1990, he was appointed as Data Entry Operator on daily wages and he worked as such till 28.11.1991. He was then appointed on ad-hoc basis and worked upto 26.5.1982, i.e. without any break, when his services were terminated by the respondent-management. He alleged that no notice or compensation in lieu thereof was given before terminating his services though he had worked for 240 days in the preceding 12 months. He further alleged that workers juniors to him were retained and even fresh appointments were made after the termination of his services, which act was

in violation of the provisions of Sections 25(F) to (H) of the Industrial Disputes Act,1947 (in short the Act). Upon notice thereof, respondent-management in its written statement took up the plea that the workman was working on daily wages to meet the exigency of work and his contract of employment was on day-to-day basis. It was pleaded that the workman did not render duty for the requisite number of days in the twelve preceding months. It was denied that the workman worked regularly from 8.10.1990 to 26.5.1992. It was further denied that any worker junior to the workman was retained in service or any fresh appointment made. Replication was filed by the petitioner-workman to the written statement denying the averments contained therein and reiterating the one in the demand notice-cum-claim statement.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of evidence led by the parties, passed the impugned award in the manner indicated above.

Upon notice of the writ petition, written statement has been filed by the respondents No.2 and 3. It has been stated therein that the the writ petition has been filed belatedly after a period of about 5-1/2 years. Petitioner-workman was not their full-time employee. It has further been stated that the workman did not lead any evidence before the Labour Court that he was not in gainful employment during the termination period.

Replication has been filed by the petitioner-workman to the written statement denying the averments contained therein and reiterating the one in the writ petition.

We have heard the learned counsel for the parties.

The learneed Labour Court though has held that the petitioner-workman has rendered service of more than 240 days in the 12 preceding months and that there has been non-compliance of Section 25-F of the Act; however, the cause of dismissing the claim of the petitioner-workman is the delay of 5-1/2 years in raising the dispute.

Learned counsel for the petitioner has referred to the decisions rendered by the Hon'ble Supreme Court in the cases of **Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another 1999 (6) SCC 82** and **Sapan Kumar Pandit v. U.P.**

**State Electricity Board and others 2001 (6) SCC 222** to contend that there is no period of limitation prescribed under the Industrial Disputes Act, 1947 (for brevity, the Act) to raise the dispute. It is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. Afore-stated references have been perused. In Ajaib Singh's case (supra) the management did not raise any plea of delay and the Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In Sapan Kumar's case (supra) it was not that the workmen had slept during the long period and woken after the end of 15 years, when the dispute was referred by the appropriate government to the Labour Court on 29.3.1993. The workman but had been pursuing their grievance in between. In this context, it has been held that when the dispute remained alive though not galvanized by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. However, it has also been observed that when the dispute had not been kept alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time.

In the instant case, petitioner-workman had raised an industrial dispute after about 5-1/2 years. His only plea is that he had been visiting the office of respondent-department who assured that he will be taken back in service. This would not suffice. There is nothing to show as to whom he had approached who had given such an assurance. This issue has already beeen dealt with by the Labour Court. A perusal of the same shows that he when appeared as a witness, did not utter even a single word to prove it.

The issue of delay has also been discussed by Hon'ble Supreme Court in the recent case of **Haryana State Coop. Land Dev. Bank v. Neelam 2005(2) RSJ 438** wherein the ratio of **Ajaib Singh's** case has also been noticed. It has been opined that although the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in **Ajaib Singh's** case(supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate government while making a reference or in a

case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court. Thus, the decision of **Ajaib Singh's** case (supra) must be held to have been rendered in the facts and situation obtaining therein. No ratio of universal application can be culled out therefrom. The conclusion thus was drawn that **"**the conduct of workman in approaching the Court after more than 7 years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one."

Similarly in the instant case such unexplained inordinate delay has rendered the dispute in question as patently stale. The dispute having been raised after a long time lapses by efflux of time.

In this context, reference can also be made to a judgment of the Hon'ble Supreme Court in **Chief Engineer, Ranjit Sagar Dam and another** v. **Sham Lal**, **2006(4) SLR 708.**

Besides this, the impugned award is dated 12.12.2003 whereas the present petition has been filed by the workman after about one and a half year, that too without any cogent and convincing explanation. Thus, the claim of the petitioner suffers from delay and laches in this Court as well.

In view of what has been stated above, we are of the opinion that the Labour Court has rightly declined the indulgence. We do not find any infirmity with the award passed by the Labour Court, which is just and reasoned. Accordingly, the petition being without any merit stands dismissed.

( ARVIND KUMAR )
JUDGE

( J. S. NARANG )
JUDGE

October 31, 2006
JS